

BEFORE THE IDAHO BOARD OF TAX APPEALS

IN THE MATTER OF THE APPEAL OF JOHN G. ) APPEAL NO. 07-A-2398  
CARTER from the decision of the Board of ) FINAL DECISION  
Equalization of Bear Lake County for tax year 2007. ) AND ORDER

**AGRICULTURAL EXEMPTION APPEAL**

THIS MATTER came on for hearing October 30, 2007 in Paris, Idaho before Board Member David E. Kinghorn. Board Member Lyle R. Cobbs participated in this decision. Appellant John G. Carter appeared at hearing. Assessor Lynn Lewis and Deputy Assessor Laura Stafford appeared for Respondent Bear Lake County. This appeal is taken from a decision of the Bear Lake County Board of Equalization (BOE) denying an agricultural exemption for taxing purposes concerning property described as Parcel No. 4499.00.

**The issue on appeal is whether subject qualifies for an exemption from property taxes pursuant to Idaho Code § 63-604 as land actively devoted to agriculture.**

**The decision of the Bear Lake County Board of Equalization is affirmed.**

FINDINGS OF FACT

The assessed land value is \$81,950. At hearing Appellant requested a one-acre homesite value of \$24,250, and the remaining acreage valued as dry grazing land.

The subject property is 42.7 acres of unimproved rural ground located in the Paris Canyon area in Bear Lake County. Subject is part of a larger 100.32 acre parcel, 57.62 acres of which is part of a Conservation Easement entered into on August 21, 2006 with the U.S. Department of Agricultural Natural Resource Conservation Services (NSRC). Subject is not included in the easement.

Appellant explained the Conservation Easement restricted the possible uses of the property under the agreement. Allowable uses included; grazing, harvest of native seeds, wildlife

uses, etc. Appellant noted a fence surrounded the larger 100.32 acre parcel. Only a gravel road separated subject from the 57.62 acres covered by the easement. Appellant contended subject's intended use was the same as the easement acres. It was stated the only reason subject's 42.7 acres were not included in the easement was because the total land mass exceeded the acreage allowed by NSRC. The total land covered by the easement is in excess of 780 acres.

Appellant argued subject qualifies for exemption because the land will be grazed according to a grazing plan yet to be approved by NSRC. Appellant acknowledged the land is not currently being grazed under traditional notions of grazing. Rather it is currently in a state of rest, between "grazing cycles." Appellant contended this practice was similar to a crop rotation program, where the land is put to rest for a period of time to replenish the soil. Appellant referenced scientific studies that suggested resting grazing land is recommended for owners who wish to protect the long-term productivity of their land. Further, Appellant argued Idaho Code does not require land be grazed each and every year, rather the grazing regimen is to be determined by the property owner.

Appellant also referenced a lease agreement concerning subject, whereby 72 beehives were placed on the land for the production of honey. Appellant testified the hives were on subject between May and October 2007. After the close of the record, Appellant provided pictures of the beehives on subject.

Appellant referred to the assessments of two (2) separate twenty-acre parcels argued to be similar to subject. The parcels were owned by Appellant and the BOE valued only the one-acre homesites at market value. The remaining acreage was granted exemption as dry grazing land. These parcels were noted to be outside the scope of the conservation agreement, same as subject. In an effort to settle this appeal, Appellant proposed subject be treated similarly, with

a one acre homesite value and the remaining acreage being granted exemption.

Respondent's position centered on the deliberate action of Appellant to keep subject outside the Conservation Easement. Respondent was not provided with documentation supporting Appellant's assertion subject was left out of the easement because the total acreage limit had been exceeded. It was believed Appellant had intentions concerning subject's use other than grazing, so the property was assessed at market value.

Also questioned was the beehive lease. Respondent visited subject on October 25, 2007 and saw no evidence of beehives. Nor was Respondent presented with a lease agreement. Appellant maintained a lease agreement existed and stated the hives were removed in early October, prior to Respondent's visit.

Respondent also observed subject was not grazed. This conclusion was reached by examination of adjacent land owned by the Bureau of Land Management, where clear evidence of grazing was observed. Pictures were submitted to illustrate the tall grass on subject compared to the adjacent grazed land. In sum, Respondent contended subject did not qualify for exemption because it was not being actively grazed.

#### CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to determine subject's eligibility for an agricultural exemption. This Board, giving full opportunity for all arguments and having considered all testimony and documentary evidence submitted by the parties in support of their respective positions, hereby enters the following.

The applicable portion of Idaho Code § 63-604 provides:

- (1) For property tax purposes, land which is actively devoted to agriculture shall be eligible for appraisal, assessment and taxation as agricultural property **each year** it meets one (1) or more of the

following qualifications:

(a) The total area of such land, including the homesite, is more than five (5) contiguous acres, and is actively devoted to agriculture which means:

(i) It is used to produce field crops including, but not limited to, grains, feed crops, fruits and vegetables; or

(ii) It is used to produce nursery stock as defined in section 22-2302(11), Idaho Code; or

(iii) It is used by the owner for the grazing of livestock to be sold as part of a for-profit enterprise, or is leased by the owner to a bona fide lessee for grazing purposes; or

(iv) It is in a cropland retirement or rotation program.

(Emphasis added)

Appellant's arguments are essentially twofold, which we will address individually.

1. Subject qualifies for exemption as grazing land because it is in a grazing rotation plan.

Appellant conceded subject was not actively being grazed during 2007. Rather, the land was being rested so the vegetation could be replenished; similar to a crop rotation program. Appellant stated scientific studies suggest that "over-grazing" depletes the land to a point where its long-term productivity is detrimentally impacted. The contention is land needs to be rested between "grazing cycles" to maximize its useful life. Appellant argued Idaho Code does not require a particular grazing regimen be followed, rather it was the choice of the property owner to determine the proper amount of grazing.

We agree, the statute does not specify how much grazing is necessary to qualify for exemption. However, the statute does require at least some grazing each year. To qualify as grazing land, the owner must "graze livestock to be sold as part of a for-profit enterprise, or [lease the land] to a bona fide lessee for grazing purposes." Appellant conceded the land was not actively devoted to the grazing of livestock. Nor was a lease agreement entered into with a bona fide lessee for grazing purposes.

The Idaho Supreme Court has held,

I.C. § 63-604 provides a tax exemption for land that is “actively devoted to agriculture.” Requiring some actual use is in accord with the rules that exemption statutes should be given the narrowest possible meaning, an exemption will not be presumed, a taxpayer must show a clear entitlement to an exemption, and that the legislature's intent must prevail. *Ada County Bd. of Equalization v. Highlands, Inc.*, 141 Idaho 202, 207, 108 P.3d 349, 354 (2005).

While we find Appellant’s “grazing rotation” program interesting and have no reason to doubt the benefits to the land, it does not squarely fit within the meaning of the statute. Some level of grazing must occur each year. Therefore, subject fails to qualify for exemption as grazing land.

2. Subject qualifies for exemption because it is used to produce field crops (i.e. honey). Appellant argued subject was used for the production of honey and stated beehives were placed on the property between May and October 2007.

The problem in this case is nothing was submitted to verify subject was used to produce honey. Respondent visited subject in late October and did not find evidence of beehives. After the close of the record, Appellant submitted photographs showing beehives on the property. Unfortunately, we cannot consider this evidence because it occurred after the record was closed in this appeal. To do otherwise would be unjust because Respondent has had no opportunity to cross examine the evidence.

The Board admires Appellant’s efforts in preserving a large tract of land in the Paris Canyon area by entering into a Conversation Easement with the U.S. Department of Agricultural Natural Resources Conversation Services. Unfortunately subject’s 42.7 acres was not included in the easement and does not otherwise qualify for tax exemption as land actively devoted to agriculture. As such, the decision of the Bear Lake County Board of Equalization is affirmed.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Bear Lake County Board of Equalization concerning the subject parcel be, and the same hereby is, affirmed.

**MAILED April 30, 2008**